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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,014	12/11/2003	John G. Nunan	034166.053	2369
25461 7590 07/16/2008 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592				
EXAMINER				
MERKLING, MATTHEW J				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
07/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/734,014

Applicant(s)

NUNAN, JOHN G.

Examiner

MATTHEW J. MERKLING

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1-13 and 25.
Claim(s) withdrawn from consideration: 14-24.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

/M. J. M./
Examiner, Art Unit 1795

Continuation of 3. NOTE: The proposed amendment to independent claim raise new issues with respect to the dependent claims that previously did not include the limitations now included in claim 1.

Continuation of 11. does NOT place the application in condition for allowance because: On pages 8-11, Applicant argues that Nunan does not teach a single catalyst layer that possesses the claimed 'non-alloyment' feature between the two catalyst metals. The examiner acknowledges that Nunan ultimately teaches in favor of a 'separated' palladium and rhodium metal, however Nunan does disclose an embodiment in which the rhodium and palladium are included in a single layer, and Applicant has not provided any evidence or persuasive argument that the co-impregnated single layer catalyst of Nunan (which is identical to the claimed single layer catalyst) would not also possess the percentage of non-alloyed catalyst material.

In arguing the combination of Fujitani, Applicant argues that Fujitani teaches support that comprises alumina and magnesia, which is different the support of Nunan. However, considering both catalysts are capable of use in the same service (exhaust gas purification), it is the examiner's position that this difference does not preclude the combination of Fujitani and Nunan. In other words, Fujitani discloses that the pore size is a variable that can facilitate catalyst performance and contact between the exhaust gas and the catalyst. Such an improvement based on a particular pore size, of which variations are an obvious catalyst design variable, would also benefit the catalyst of Nunan.

In arguing the combination of Fujitani and Anatoly, Applicant goes on to state (on page 15):

"While the precise reason why alloy formation does not occur for the 1-layer Pd-Rh technology is not clear, applicant believes that it is related to the specific material types used in the wash coat composition. Thus, Claim 1 has now been amended to describe the characteristics of these wash coat materials in terms of their composition, morphological (porosity) and structural (cubic phase for the oxygen storage components) properties."

As best understood, Applicant is arguing an unexpected result that produces non-alloyed catalyst metals in a single layer under alloying conditions. This unexpected result is the result of the specific washcoat in which the catalyst metals are applied (which is not claimed in the independent claims). However, Applicant is referred to MPEP §2145 which states: "A showing of unexpected results must be based on evidence, not argument or speculation". As such, Applicant's speculation to the cause of such non-alloyment under alloying conditions is not persuasive..